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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ST. FRANCIS MEMORIAL HOSPITAL	)	No. C 08-1440 (MMC)
AND FRANKLIN BENEVOLENT	)	
CORPORATION f/k/a DAVIES MEDICAL	)	JOINT STATEMENT REGARDING THE
CENTER,	)	PARTIES' VIEWS ON ALTERNATE
	)	DISPUTE RESOLUTION
Plaintiffs,	)	
	)	AND ORDER THEREON
v.	)	
	)	
MICHAEL O. LEAVITT, Secretary,	)	
U.S. Department of Health and Human	)	
Services,	)	
	)	
Defendant.	)	

1 During and immediately following the Initial Case Management Conference which was held  
2 on August 22, 2008, this Court instructed the parties to submit a joint statement regarding their  
3 respective positions regarding whether this case is a suitable candidate for Alternate Dispute  
4 Resolution and/or settlement. See Docket Entry No. 20. In response to this directive, the parties  
5 now submit this Joint Statement regarding their views on alternate dispute resolution.

6 In the past few weeks, the parties and their counsel have carefully considered and had  
7 numerous, extensive, and serious internal deliberations and conversations with each other  
8 concerning the following matters: (1) their respective legal positions and understanding of the  
9 case; (2) the possibility of a monetary settlement; (3) the prospect of a settlement agreement  
10 awarding the only relief that Plaintiffs are seeking in this action, a remand to the Provider  
11 Reimbursement Review Board ("PRRB"); and (4) the question of whether court-supervised  
12 alternate dispute resolution ("ADR") would be beneficial in this case to the parties and Court  
13 alike. The parties have concluded that court supervised ADR would not be beneficial or  
14 appropriate in this case for at least five reasons.

15 First, the parties believe that they clearly understand the legal issue before this Court as well  
16 as the strengths and weaknesses of their respective positions, and require no ADR to improve  
17 their insight into these matters or to narrow the issues in dispute and identify areas of agreement.  
18 See ADR Local Rule 1-2(a) (identifying such a improved "clarity of understanding" as one  
19 possible reason that resort to ADR may be appropriate in a given case); see also Dispute  
20 Resolution Procedures in the Northern District of California at 4-5 (same). The parties agree that  
21 the issue before the Court is a clear and discrete legal issue which they believe is fully developed,  
22 which they feel ready to brief, and which they believe the Court is competent to resolve.

23 Second, the parties do not believe that ADR can serve here to "help settle all or part of [this]  
24 dispute." See Dispute Resolution Procedures in the Northern District of California at 4. The  
25 parties agree that there is no realistic prospect of a settlement at this juncture. The legal issue  
26 before the Court is a binary issue as to which no middle ground exists: either the PRRB was  
27 correct in its jurisdictional decisions or not. Defendant contends that as no monetary amount is  
28 presently at issue in this case, there is technically no dollar amount in controversy which could

1 otherwise be the subject of a compromise between the parties. Defendant's position is that while  
2 it is always possible to assign some monetary value to a case, that is difficult to do here as a basis  
3 of settlement because the underlying merits are not before this Court. Moreover, Defendant  
4 believes that the jurisdictional issue that is before the Court is an important one that should be  
5 resolved by judicial review. Plaintiffs would be prepared to participate in ADR to negotiate  
6 monetary relief.

7 Third, ADR is not needed here to facilitate "the parties' access to evidence," to help  
8 "streamline discovery," or to help the parties "reach factual . . . stipulations." See ADR Local  
9 Rule 1-2(a) and Dispute Resolution Procedures in the Northern District of California at 5  
10 (identifying these as possible reasons that resort to ADR may be appropriate in some cases.).  
11 This case is governed by the standards set forth in the Administrative Procedure Act, and judicial  
12 review under the Administrative Procedure Act is generally limited to the record before the  
13 agency. The relevant facts in this case are undisputed and contained in the certified  
14 administrative record which has been filed with the Court. However, Plaintiffs contend that they  
15 reserve the right to request discovery after they have had an opportunity to review the  
16 administrative record in this case.

17 Fourth, the formal litigation of this case is not likely to impose "large economic burdens" and  
18 result in the sort of "delay" in the resolution of disputes which often are associated with  
19 litigation, minimizing the need for ADR on this basis. See ADR Local Rule 1-2(a). As  
20 mentioned, the issue before the Court is a clear and discrete legal issue. Moreover, the parties  
21 agree that a trial will not be necessary or appropriate in this action, limiting the economic costs  
22 and delay associated with this litigation in this case, as compared to the typical case. Instead, the  
23 parties anticipate that this case may be resolved in relatively short order, based on a consideration  
24 of the dispositive motions for summary judgment which they intend to file along with any oral  
25 argument which this Court may order.

26 Fifth, the parties do not believe that ADR is required in this case to "improve the quality and  
27 tone of communication between parties," or to "decrease hostility between clients and between  
28 lawyers." See Dispute Resolution Procedures in the Northern District of California at 5.

Counsel have had an amicable and professional relationship to date, and expect that will continue.

Finally, Defendant contends that ADR would not be useful in this case because it “prefers that a judge preside over all processes.” See Dispute Resolution Procedures in the Northern District of California at 5.

As the case proceeds, the parties are fully prepared to revisit these matters if circumstances or their view of the case changes.

Respectfully submitted,

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Attorneys for Plaintiffs


Attorneys for Federal Defendant

Dated: September 12, 2008

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APPROVED AND SO ORDERED. The parties need not participate in ADR at this time.

Dated: September 16, 2008

  
MAXINE M. CHESNEY  
United States District Judge